

without the prior written approval of the Administrator, make such investments, loans, and guarantees to extend, add to, or modify its electric system. Moreover, funds necessary to make timely payments of principal and interest on loans secured by the RUS mortgage remain subject to RUS controls on borrower investments, loans and guarantees.

(b) RUS will not consider requests from borrowers to exclude investments, loans, or guarantees made below the 15 percent level. (Categorical exclusions are set forth in § 1717.655.)

§ 1717.655 Exclusion of certain investments, loans, and guarantees.

(a) In calculating the amount of investments, loans and guarantees permitted under this subpart, there is excluded from the computation any investment, loan or guarantee of the type which by the terms of the borrower's RUS mortgage or RUS loan contract the borrower may make in unlimited amounts without RUS approval.

(b) Furthermore, the borrower may make unlimited investments, without prior approval of the Administrator, in:

(1) Securities or deposits issued, guaranteed or fully insured as to payment by the United States Government or any agency thereof;

(2) Capital term certificates, bank stock, or other similar securities of the supplemental lender which have been purchased as a condition of membership in the supplemental lender, or as a condition of receiving financial assistance from such lender, as well as any other investment made in, or loans made to, the National Rural Utilities Cooperative Finance Corporation, the Saint Paul Bank for Cooperatives, and CoBank, ACB;

(3) Patronage capital allocated from an electric power supply cooperative of which the borrower is a member; and

(4) Patronage capital allocated from an electric distribution cooperative to a power supply borrower.

(c) Without prior approval of the Administrator, the borrower may also:

(1) Invest or lend funds derived directly from:

(i) Grants which the borrower is not obligated to repay, regardless of the source or purpose of the grant; and

(ii) Loans received from or guaranteed by any Federal, State or local government program designed to promote rural economic development, provided that the borrower uses the loan proceeds for such purpose;

(2) Make loans guaranteed by an agency of USDA, up to the amount of principal whose repayment, with interest, is fully guaranteed; and

(3)(i) Make unlimited investments in and unlimited loans to finance the following community infrastructure that serves primarily consumers located in rural areas as defined in 7 CFR 1710.2, and guarantee debt issued for the construction or acquisition of such infrastructure, up to an aggregate amount of such guarantees not to exceed 20 percent of the borrower's equity:

(A) Water and waste disposal systems;

(B) Solid waste disposal systems;

(C) Telecommunication and other electronic communication systems; and

(D) Natural gas distribution systems.

(ii) In each of the four cases in paragraph (c)(3)(i) of this section, if the system is a component of a larger organization other than the borrower itself (e.g., if it is a component of a subsidiary of the borrower or a corporation independent of the borrower), to be eligible for the exemption the borrower must certify annually that a majority of the gross revenues of the larger organization during the most recent fiscal year came from customers of said system who were located in a rural area.

(d) Also excluded from the calculation of investments, loans and guarantees made by the borrower are:

(1) Amounts properly recordable in Account 142 Customer Accounts Receivable, and Account 143 Other Accounts Receivable;

(2) Any investment, loan, or guarantee that the borrower is required to make by an agency of USDA, for example, as a condition of obtaining financial assistance for itself or any other person or organization;

(3) Investments included in an irrevocable trust for the purpose of funding

post-retirement benefits of the borrower's employees;

(4) Reserves required by a reserve bond agreement or other agreement legally binding on the borrower, that are dedicated to making required payments on debt secured under the RUS mortgage, not to exceed the amount of reserves specifically required by such agreements; and

(5) Investments included in an irrevocable trust approved by RUS and dedicated to the payment of decommissioning costs of nuclear facilities of the borrower.

(e) Grandfathered exclusions. All amounts of individual investments, loans, and guarantees excluded by RUS as of February 16, 1995 shall remain excluded. Such exclusions must have been based on the RUS mortgage, RUS loan contract, regulations, bulletins, memoranda, or other written notice from RUS. Profits, interest, and other returns earned (regardless of whether or not they are reinvested) on such investments, loans and guarantees after February 16, 1995 shall be excluded only if they are eligible for exclusion under paragraphs (a) through (d) of this section. Any new commitments of money to such investments, loans and guarantees shall likewise be excluded only if they are eligible under paragraphs (a) through (d) of this section.

(f) Any investment, loan or guarantee made by a borrower that is not excluded under this section or under § 1717.657(d) shall be included in the aggregate amount of investments, loans and guarantees made by the borrower, regardless of whether RUS has specifically approved the investment, loan or guarantee under § 1717.657(c), or has approved a related transaction (e.g., a lien accommodation).

§ 1717.656 Exemption of certain borrowers from controls.

(a) Any distribution or power supply borrower that meets all of the following criteria is exempted from the provisions of the RUS mortgage and loan contract that require RUS approval of investments, loans, and guarantees, except investments, loans, and guarantees made to extend, add to, or modify the borrower's electric system:

(1) The borrower is in compliance with all provisions of its RUS mortgage, RUS loan contract, and any other agreements with RUS;

(2) The average revenue per kWh for residential service received by the borrower during the two most recent calendar years does not exceed 130 percent of the average revenue per kWh for residential service during the same period for all residential consumers located in the state or states served by the borrower. This criterion applies only to distribution borrowers and does not apply to power supply borrowers. If a borrower serves customers in more than one state, the state average revenue per kWh will be based on a weighted average using the kWh sales by the borrower in each state as the weight. The calculation will be based on the two most recent calendar years for which both borrower and state-wide data are available. If a borrower fails to qualify for an exemption based solely on its failure to meet this criterion on rate disparity, at the borrower's request the Administrator may, at his or her sole discretion, exempt the borrower if he or she finds that the borrower's strengths with respect to the other criteria are sufficient to offset any weakness due to rate disparity;

(3) In the most recent calendar year for which data are available, the borrower achieved an operating TIER of at least 1.0 and an operating DSC of at least 1.0, in each case based on the average of the two highest ratios achieved in the three most recent calendar years;

(4) The borrower's ratio of net utility plant to long-term debt is at least 1.1, based on year-end data for the most recent calendar year for which data are available; and

(5) The borrower's equity is equal to at least 27 percent of its total assets, based on year-end data for the most recent calendar year for which data are available.

(b) While borrowers meeting the criteria in paragraph (a) of this section are exempt from RUS approval of investments, loans and guarantees, they are nevertheless subject to the record-keeping, reporting, and other requirements of § 1717.658.